

JOHN RICHARD BODIE

IBLA 81-78

Decided April 14, 1981

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring a placer mining claim abandoned and void. M MC 17314.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management Office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: John Richard Bodie, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

John Richard Bodie has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Jackie-Dick placer mining claim, M MC 17314, abandoned and void for failure to file evidence of annual assessment work or a notice of intention to hold the claim pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulation, 43 CFR 3833.2-1(c).

The Jackie-Dick mining claim was located by appellant on September 24, 1978, and filed for recordation with BLM November 13, 1978. On appeal appellant states only that "fees have been paid and assessment work filed." 1/

1/ The fee paid by appellant was the \$ 5 recordation fee required by 43 CFR 3833.1-2(d) and paid by appellant in Nov. 1978.

[1] The pertinent regulation, 43 CFR 3833.2-1(c), requires the owner of an unpatented mining claim located on Federal land after October 21, 1976, to file in the proper BLM office, evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30, of each year following the calendar year in which the claim was located.

Failure to file an instrument required by 43 CFR § 3833.2-1 within the prescribed time periods is deemed conclusively to constitute an abandonment of the claim. 43 CFR 3833.4(a).

The only evidence contained in the case record of annual assessment work filed with BLM was filed on October 10, 1980, after the issuance of the BLM decision. This copy of "Affidavit of Annual Representation of Mining Claim" was recorded in the recorder's office, Broadwater County, Montana, on June 22, 1980. Filing in the local State office does not comply with 43 CFR 3833.2-1(c). Johannes Soyland, 52 IBLA 233 (1981).

When appellant failed to file timely either an affidavit of assessment work or notice of intention to hold the claim, BLM properly held the claim to have been abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

